



Federal Court Rules That Instacart Workers Cannot Escape Arbitration Despite FAA Argument

Insights

12.30.20

A federal district court in Illinois just ruled that a proposed class of gig economy delivery drivers and paid shoppers must individually arbitrate their claims that they were misclassified as independent contractors, rejecting an attempt to escape arbitration that has been successful in other parts of the country. This December 21 decision means that Instacart will be able to litigate claims over minimum wages, overtime compensation, and other benefits in its preferred forum – and is another piece in an increasingly fractured national puzzle over a critical issue, which could lead to Supreme Court intervention in 2021. Why is this decision important and how might it work in your favor?

The Decision

The U.S. District Court for the Northern District of Illinois delivered good news to gig economy companies right before Christmas. In *O'Shea v. Maplebear, Inc.*, the court ruled that Instacart workers cannot avoid arbitration by claiming that they are exempt transportation workers. Last year, the Supreme Court ruled in *New Prime v. Oliveira* that the Federal Arbitration Act's (FAA's) exemption that excludes those with "contracts of employment of workers engaged in interstate commerce" from arbitration includes workers with independent contractor agreements. We immediately raised a red flag and discussed whether gig delivery and ride-sharing drivers would be considered to be operating in interstate commerce, and if so, whether courts would soon block arbitration agreements from being enforced.

Under the FAA, arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." Hence, the FAA requires federal courts to compel arbitration of arbitrable claims when one of the parties file a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums. In other words, the FAA mandates courts to stay or dismiss proceedings and compel arbitration on issues as to which an arbitration agreement has been signed.

In line with the FAA's purpose, the district court granted Instacart's Motion to Compel Arbitration because each plaintiff signed an arbitration agreement requiring them to arbitrate "any and all disputes" between them and Instacart.

Instacart's Gig Economy Program

Instacart is a grocery-delivery platform that uses workers to shop for and deliver groceries from various stores such as Whole Foods, Trader Joe's, Costco, and Aldi. Once an order is made on Instacart's website or its mobile app, potential shoppers in proximity receive a notification and can either accept or decline the request. The shopper that accepts the order then drives to the particular grocery store, picks up the items, and delivers them to the customer's address. These shoppers are not full-time employees; rather, according to their independent contractor agreement, they are classified as independent contractors and are paid only when they deliver an order.

What Did The Court Say About These Workers?

The plaintiffs argued that the FAA's mandate to enforce arbitration agreements did not apply in this situation. Specifically, the plaintiffs asserted that they fall under the FAA's exemption for "seaman, railroad employees, or any other workers engaged in foreign or interstate commerce." This is commonly referred to as the "transportation worker exception" of the FAA. In support of their assertion, the plaintiffs offered three reasons why they fall under the transportation worker exception: (1) they are engaged in the movement of goods from grocery store to customer; (2) their work for Instacart relies on hundreds of pieces of information that are transmitted across multiple state lines among the shopper, Instacart, and the customer via the Instacart app; and (3) internet-based transaction are, per se, interstate commerce.

The court rejected this argument. In reaching its decision, the court relied on the 7th Circuit's decision in *Wallace v. Grubhub Holdings, Inc.* from this past summer which ruled that food delivery drivers for web-based delivery services are not considered transportation workers exempt under the FAA. The decision in *Wallace*, the court concluded, dictated the outcome of the plaintiffs' case. The court further concluded that "drivers who deliver food purchased over the internet from a grocery store differ in no material way from drivers who pick up food purchased over the web from a restaurant." Moreover, the court stated, if the transportation worker exception applied to the plaintiffs, then "it would encompass any number of workers, including, for example, a local pizza delivery driver dispatched after a customer places an online order."

What Does This Mean for Employers?

This ruling is welcoming news for gig economy businesses in Illinois, as well as those in Indiana and Wisconsin, as a district court has now applied the 7th Circuit's *Grubhub* decision to another gig economy platform. They can feel confident that a court will order arbitration for gig economy workers whose jobs do not center around the movement of goods across state lines. Although a class of workers may be an essential part of a larger series of interstate transactions, "it is not enough to bring those workers within the [transportation worker exception]," the court stated.

This decision, however, brings to light a split in the circuits. While the 7th Circuit has ruled that gig workers do not fall within the transportation worker exception, the 3rd Circuit (covering New Jersey

workers do not fall within the transportation worker exception, the 3rd Circuit (covering New Jersey, Pennsylvania, and Delaware) and the 9th Circuit (California, Washington, Oregon, Arizona, Nevada, and several other western states) have ruled the contrary. Thus, this decision may bring the Supreme Court closer to stepping in and resolving the circuit split.